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May 11, 2005

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Federal Communications Commission  
Office of Secretary

**BY HAND DELIVERY**

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
Office of the Secretary  
236 Massachusetts Avenue, N.E., Suite 110  
Washington, DC 20002

Re: Notice of Oral *Ex Parte* Presentations – Request for  
Expedited Declaratory Ruling (MB Docket No. 04-75)

Dear Ms. Dortch:

On May 5, 2005, Messrs. Darnell Washington, President of Destiny Licenses, LLC (“Destiny”); Erwin G. Krasnow, Esq., Garvey, Schubert Barer, counsel to Destiny; David Honig, Executive Director, Minority Media & Telecommunications Council (“MMTC”); and the undersigned, counsel to Max Media of Montana, LLC (“Max Media”) in the above-referenced docket, met with Ms. Catherine Bohigian, Legal Advisor on Media Issues, Office of Chairman Kevin J. Martin, and Mr. Jordan Goldstein, Senior Legal Advisor to Commissioner Michael J. Copps, regarding the Request for Expedited Declaratory Ruling filed on February 25, 2004 (Public Notice DA 04-747, March 19, 2004).

The representatives of Max Media and Destiny both referred to their pleadings in this proceeding and reiterated that Sunbelt Communications Company (“Sunbelt”) entered into a confidential multi-station network affiliation arrangement with NBC, which has resulted in, among other things, imminent cancellation of NBC’s network affiliation with KTGF(TV). As evidence of that arrangement, attached to the initial request was a letter dated April 26, 1999, from John Damiano, then the Senior Vice President for Affiliate Relations at NBC, to James E. Rogers, the controlling owner and President of Sunbelt (the “NBC Letter”). A copy of that letter also is attached hereto.

Max Media quoted the express language of Section 73.658(b), the applicable rule at issue in this proceeding, noting that the elements of a prima facie violation of Section 73.658(b) are: (1) a television broadcasting station having any contract, arrangement, or understanding, express or implied with a network organization; and (2) where the contract, arrangement or understanding prevents or hinders a broadcast station located in a different community from broadcasting any program of the network organization.

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The representatives of Max Media and Destiny further commented on the evidence in the record with emphasis on the second to the last paragraph (beginning "Sixth") in the NBC Letter:

Sixth: NBC had made a decision that it will not renew its affiliation agreement with Channel 16 in Great Falls, Montana. That agreement will not expire until July 2005. It is NBC's ***understanding that if NBC does not renew that agreement***, Beartooth Communications Company, the NBC affiliate in Helena, Montana, will establish a news bureau in Great Falls that would make KTVH in Helena competitive with the present ABC and CBS stations in Great Falls. It is NBC's further understanding that the signal from Channel 12 in Helena is either now or will be adequate to cover the Great Falls area so there will be no substantial reduction in viewership of NBC programming in the Great Falls DMA. Channel 12 in Helena, with the added coverage of Channel 2 in Havre and Channel 13 in Lewistown, will serve to further cover the Great Falls DMA presently covered by Channel 16 in Great Falls. [Emphasis added.]

This evidence is uncontroverted. The authenticity of the letter is undisputed. Neither NBC, nor Sunbelt, has produced any objective evidence of an independent business-judgment basis for NBC's decision that it will not renew its affiliation agreement with Channel 16 in Great Falls, Montana. Neither party has produced any correspondence previous to, or subsequent to, the NBC Letter to change the letter's apparent meaning.

While the first sentence in the paragraph indicates that NBC's decision not to renew KTGF's affiliation was made prior to the NBC Letter, there is no basis to assume that decision was independent of the understanding with Sunbelt. In fact, a subsequent sentence clearly makes NBC's decision ***conditional*** upon an "... ***understanding that if NBC does not renew that agreement***," Beartooth Communications Company, the NBC affiliate in Helena, Montana, would perform in certain ways in exchange for the right to cover the Great Falls DMA with NBC programming, thereby expanding its network territory at the expense of KTGF.

Destiny and Max Media explained the reasons for seeking expedited declaratory relief. There is an opportunity to avoid a greater harm to the new licensee of KTGF(TV), a minority owner, if the Commission clarifies the network territorial exclusivity rule before the current term of the KTGF(TV) affiliation agreement expires on July 1, 2005. The NBC Letter to Sunbelt is sufficient evidence to warrant the issuance of an order to show cause why the licenses of KBAO(TV), Lewistown, Montana, KBBJ(TV), Havre, Montana, KJWY(TV), Jackson, Wyoming, KSWY(TV), Sheridan, Wyoming, KCWY(TV), Casper, Wyoming, and KTVH(TV), Helena, Montana (referenced in the NBC Letter) should not be revoked for violating the Commission's network territorial exclusivity rule, 47



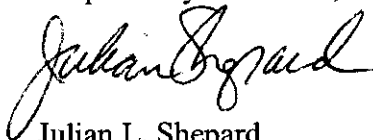
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C.F.R. § 73.658(b), if NBC continues on its current course of conduct. An expeditious declaratory ruling to this effect would serve the public interest, as Sunbelt and NBC would be put on notice of the consequences in time to avert a rule violation.

In sum, the evidence before the Commission in this proceeding is sufficient to warrant the declaratory relief sought by Max Media and Destiny. All of the factual arguments advanced by NBC and Sunbelt are irrelevant, given the NBC Letter, its apparent meaning, and NBC's current course of conduct. Pursuant to Section 1.1206(b) of the Commission's Rules, an original and one copy of this letter are being submitted to the Secretary's office, with a copy to Ms. Bohigian and Mr. Goldstein.

Respectfully submitted,



Julian L. Shepard

cc: Catherine Bohigian  
Jordan Goldstein

30 Rockefeller Plaza  
New York, NY 10119  
212 664-4327  
212 664-4700 Fax

A Division of  
National Broadcasting  
Company, Inc.

James E. Rogers  
Vice President  
Affiliate Relations



April 29, 1988

Mr. James E. Rogers  
President  
Sunbelt Communications Company  
1509 Foremaster Lane  
Las Vegas, Nevada 89101

Dear Jim:

I am writing in reference to the several initiatives which Sunbelt Communications, through its various subsidiaries, has undertaken in various Mountain Time zone markets involving the NBC Television network. Some of these may take time to implement, but this letter will indicate an ongoing commitment between our two companies in these areas. Obviously, the contents of this correspondence are confidential.

First, should the results of research being conducted in Havre and Lewistown indicate to NBC the potential to increase its network performance, NBC will agree to affiliate with satellites of Channel 12 KTVH, the NBC affiliate in Helena, Montana as soon as those two satellites become operational. Those satellites will be constructed in Havre, Montana and Lewistown, Montana. There will be no additional financial compensation for KTVH or its satellites.

Second, NBC agrees to transfer its network affiliation from KTYO in Casper, Wyoming, to Sunbelt Communications, or one of Sunbelt's subsidiaries, at the conclusion of NBC's current Casper affiliation agreement. At such time as Sunbelt has an operational facility in Casper to broadcast all the NBC programming, NBC will notify the present affiliate in Casper that NBC will not renew KTYO's affiliation agreement when it expires. Should KTYO then wish to terminate its affiliation agreement with NBC before the affiliation agreement would otherwise terminate, Sunbelt's facilities in Casper would begin to broadcast NBC's programming in Casper as soon as the present owner and NBC are free of any contractual obligations. NBC understands that Sunbelt Communications will provide facilities and staff and news programming at least equal to that in Sunbelt's NBC station in Helena, Montana, but not less than KTYO has provided its viewers at any time in the past. The news operation will be extended to any Wyoming satellites of Sunbelt's Casper broadcast facility at such time as NBC agrees to affiliate with such Wyoming satellite station.

Third, as a reaffirmation of our previous verbal agreement with Sunbelt, NBC agrees that a station to be constructed by Sunbelt in Sheridan, Wyoming on Channel 9, on which Sunbelt holds a construction permit, will become the NBC affiliate or satellite at such time as broadcast facilities are completed and the station begins telecasting.



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Letter to J. Rogers - Sunbelt Communications  
April 28, 1988

Fourth, NBC agrees to the transfer of KJWY in Jackson, Wyoming, currently an NBC satellite of KPVI, the NBC station in Pocatello-Idaho Falls, Idaho, to the status of an NBC satellite station of Sunbelt's Casper station when Sunbelt's Casper station becomes affiliated with NBC.

Fifth, NBC would agree that as Sunbelt Communications acquires other satellite locations within the State of Wyoming, on which Sunbelt would supply Wyoming news programming, NBC would give serious consideration, consistent with its affiliation policies, to make those stations NBC satellite affiliate stations. In no circumstance could Sunbelt construct satellites or transmitters in states adjacent to Wyoming to serve Wyoming viewers without express written consent from NBC.

Sixth, NBC had made a decision that it will not renew its affiliation agreement with Channel 16 in Great Falls, Montana. That agreement will not expire until July 2005. It is NBC's understanding that if NBC does not renew that agreement, Bearfoot Communications Company, the NBC affiliate in Helena, Montana, will establish a news bureau in Great Falls that would make KTVH in Helena competitive with the present ABC and CBS stations in Great Falls. It is NBC's further understanding that the signal from Channel 12 in Helena is either now or will be adequate to cover the Great Falls area so there will be no substantial reduction in viewership of NBC programming in the Great Falls DMA. Channel 12 in Helena, with the added coverage of Channel 5 in Havre and Channel 13 in Lewistown, will serve to further cover the Great Falls DMA presently covered by Channel 16 in Great Falls.

NBC and Sunbelt have had a great partnership and our future should prove even more positive for you and us. We look forward to working with you for many years to come.

Sincerely,

JFD:amh

Cc: L. Alden  
J. Olatz  
J. Kitch